

Notice of Allowability

Application No.

09/981,178

Examiner

Matthew F. DeSanto

Applicant(s)

STELLON ET AL.

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 2/21/07.
2. ☒ The allowed claim(s) is/are 2-7, 9, 10 and 22-30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date 2/21/07
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Amendment to the specification, in the first line of the specification please add:

This application is a divisional of application Ser. No. 09/526,837 filed March 16, 2000, now U. S. Patent No. 6,319,266, which is incorporated herein by reference.

Claim 22:

A trocar system, which comprises:

- a cannula defining a longitudinal axis and having a longitudinal opening therethrough;
- and
- an obturator at least partially positionable within the longitudinal opening of the cannula, the obturator including:
 - an obturator housing;
 - an obturator shaft extending from the obturator housing and receivable within the cannula sleeve, and having a penetrating member adapted to penetrate tissue;
 - a guard mounted about the penetrating member ~~obturator blade~~, the guard and the obturator shaft being adapted for relative longitudinal movement between a first relative position corresponding to an unarmed condition of the penetrating member and a second relative position corresponding to an armed condition of the penetrating member;
 - a latch member monolithically formed with the obturator housing, the latch member being moveable from an initial position securing the guard and the obturator shaft in the first relative position to a release position permitting the guard and the obturator shaft to move to the second relative position, the latch member arranged within the obturator housing in cantilever relation therewith and being normally biased toward the initial position thereof; and
 - a release member mounted to the obturator housing and operatively coupled with the latch member, the release member adapted to move the latch member to the release position during positioning of the obturator within the longitudinal opening of the cannula.

Reasons for Allowance

2. The following is an examiner's statement of reasons for allowance:

The subject matter of the independent claims could either not be found or was not suggested in the prior art of record. The subject matter not found for claim 3 was a trocar system with a cannula, an obturator housing, an elongated shield including a guard, a latch mechanism (as shown in figures 4 and 6), a release member with a button that extends outside the obturator housing, and a latch (which is part of the latch mechanism) that controls the movement of the elongated shield and how the shield is biased with regards to the release member. With regards to claim 22, the subject matter not found was the latch member be formed monolithically with the obturator housing as well as in combination with the other elements or steps of the claim.

The independent claims also include other patentable subject matter in combination with the other elements or steps of the claim not mention in the above paragraph.

The examiner also relied on the applicant's remarks as part of the reason for allowance and therefore has copied the remarks below: "independent claim 3 has been amended to incorporate the limitations of prior dependent claim 8. The added recitation directed to the extended surface of the shield relates to, e.g., the posts 135, which cause the legs 156a, 156b of the slider 156 to move inwardly away from the latch 150 upon movement of the shield, thereby releasing the latch 150 (see, e.g., discussion at page 14, lines 7-22 of Applicant's specification) to permit the latch to assume a reset position. Independent claim 22 has been amended to incorporate the language of prior

dependent claims 31-33. Thus, no new issues are presented with respect to the amendments of independent claims 8 and 22.


With regard to independent claim 22, Holmes '042 fails to teach or suggest the recited "latch member monolithically formed with the obturator housing..., the latch member arranged within the obturator housing in cantilever relation therewith and being normally biased toward the initial position thereof". These features enable the latch member to utilize the natural resiliency of the material of fabrication of the obturator housing (whether it is metal or a polymeric material) to permit the latch member to pivot or flex about its fulcrum, i.e., functioning as a cantilever, in securing and releasing the guard. Moreover, by monolithically forming the support component, e.g., the housing, with an operational component, e.g., the latch member, Applicant has achieved a superior design which is extremely durable and effective, and realizes significant advantages over the prior art including Holmes '042. With respect to Holmes '042, the leaf spring member 44 is a separate component requiring an intricate system including a cavity 46 of the housing half 20, a shelf (no reference number) and a pin (no reference number) to mount the leaf spring member 44 within the housing half 20. Accordingly, the leaf spring member 44 may be subject to displacement or disassembly during transport or use. Moreover, by virtue of its independent status and intricate mechanism for mounting to the housing half 20, the leaf spring member 44 does not achieve the durability and effectiveness realized by Applicants' "monolithically formed" latch member."

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F. DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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